HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.696 OF 2006

Between:

The District Collector, Kurnool,
and others

. . .Appellants

AND

P.Bashu and others . .Respondents

Counsel for the appellants : Government Pleader for Assignment

Counsel for the respondents : None

Dated: 22nd June, 2006

: ORDER :

PER G.S.SINGHVI, CJ

This appeal is directed against order dated 12.04.2006 passed by the learned Single Judge in W.P.No.19378 of 2005, whereby he granted liberty to the respondents to file appeal against the order of Mandal Revenue Officer, Dhone, Kurnool District (appellant No.3 herein).

One Mahaboob Khan purchased land comprised in Survey No.480 of Dhone Village, Dhone Mandal, Kurnool District from its recorded owner vide registered sale deed dated 15.08.1919. After the death of Mahaboob Khan, the land was partitioned among his three sons namely Hasan Khan, Abdur Rahaman Khan and Noor Khan. In 1990, the State Government acquired different parcels of land, which came to the share of the three sons of late Mahaboob Khan. For this purpose, notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 21.09.1990. After completion of land acquisition proceedings, the three sons of Mahaboob Khan were paid compensation. After acquisition, Abdul Rehman Khan transferred his remaining land by executing gift deed in favour of respondent No.3 Saleema Begum. Similarly, land measuring Acs.3.57 cents and Ac.0.65 cents comprised in Survey No.479/HIC and land measuring Ac.1.61 cents comprised in Survey No. 479/HIA was purchased by Kamal Saheb and Ramgopal under registered sale deeds from Peda Pullaiah and China Pullaiah respectively. In 1977, the State Government acquired about Ac.1.00 of land and paid compensation to those who were in possession. Land measuring

Acs.3.00, Ac.0.74 cents and Ac.0.73 cents comprised in Survey No.479/H3 was purchased by M/s Pinjari Bashu, G.Hanumantha Rao and N. Lakshmaiah under the registered sale deed dated 27.10.1986. When a part of that land was acquired, the State Government paid compensation to the vendors. In February 2005, appellant No.3 issued notices to various persons including the respondents proposing their eviction on the ground that the land comprised in Survey No. 479/H and 480 is Government land. After making a show of enquiry, appellant No.3 passed order dated 14.08.2005 resuming the land.

The respondents challenged the aforementioned order in Writ Petition No.19378 of 2005. In the affidavit filed in support of the writ petition, it was averred that they are owners in possession of the land and Mandal Revenue Officer did not have jurisdiction, power, authority to order their eviction by treating the same as Government land. It was pleaded that Mandal Revenue Officer concerned could not order their eviction without complying with the provisions of the Andhra Pradesh Land Encroachment Act, 1905 or the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. In the counter filed on behalf of the appellants, it was averred that the sale transaction under which Mahaboob Khan purchased the land comprised in Survey No.480 was nullity because the vendor namely Mababoob Bi was not the owner. It was further averred that the land was Government land and the same could not have been sold by a private person.

In the course of hearing of the writ petition, it was brought to the notice of the learned Single Judge that similar writ petitions filed by other persons had been disposed of by the Court by giving liberty to the writ petitioners to avail remedy of appeal. After taking note of this fact, the learned Single Judge disposed of the writ petition giving liberty to the writ petitioners (respondents herein) to file appeal against order dated 14.08.2005. The relevant portions of the order of the

learned Single Judge are re-produced below:

> "W.P.No.18630 of 2005 is filed against the proceedings dated 14.08.2005, which was issued by the MRO after considering the explanation of the petitioners therein. The other two writ petitions were filed after receiving the notice dated 09.06.2005, apprehending dispossession. A perusal of the proceedings dated 14.08.2005 would however reveal the said order covers all the writ petitions. Therefore, these writ petitions can also be disposed of in the above terms. Here, an important submission made by Sri E.Ayyapu Reddy, learned counsel for the petitioners in W.P.No.18630 of 2005 needs to be considered. Learned counsel submits that when the land is in possession of the petitioners for a long time over a period of more than nine decades, the summary proceedings under LE Act cannot be taken by revenue officials for eviction of the petitioners. It is no doubt true that originally the land in Survey No.480 belonged to Mahaboob Bi, which was purchased by Mahaboob Khan under sale deed dated 15.08.1919. The land since then has been allegedly in possession of the petitioners, who obtained patadar passbooks under the Act. In all these matters, a portion of the land was acquired for National Highway and the compensation was paid either to the petitioners or to their predecessors in title. All these allegations, if true, are certainly the acts of possession and method of exercising the right over the land. Even when the action is initiated under LE Act, the respondents are bound to consider this aspect of the matter. Be it also noted that under Article 112 of the Limitation Act, 1963, the limitation for the Government to file a suit for declaration is 30 years. If the Government files a suit under Limitation Act, can they succeed now or whether such suit is barred by limitation. These are the primary issues, which cannot be ignored. Now that the final orders are already passed, it would not be proper for this Court to express any opinion on these questions.
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> In view of the above reasons, this Court is of considered opinion that the petitioners may file appeal before the RDO against the proceedings of the MRO

dated 14.08.2005. As and when such appeals are filed, RDO shall consider the same and pass appropriate orders keeping in view the observations made herein above on legal questions. Till such exercise is completed, there shall be status quo as to possession."

We have heard learned Government Pleader for Assignment and perused the record and are convinced with the reasons assigned by the learned Single Judge for disposing of the writ petition with liberty to the writ petitioners to file appeal before the Revenue Divisional Officer against proceedings of the Mandal Revenue Officer dated 14.08.2005 with the rider that status quo with regard to the possession shall be maintained till the disposal of the appeal do not suffer from any legal infirmity.

It is not in dispute that predecessors of the respondents had purchased the land by registered sale deed in 1919. It is also not in dispute that a part of the land, which was purchased by the predecessors of the writ petitioners, had been acquired by the Government and compensation paid to those who were recorded as owners. After many decades, the Mandal Revenue Officer initiated action for their eviction and summarily passed order dated 14.08.2005. The learned Single Judge took cognizance of orders passed in similar writ petitions and settled the equity by directing the writ petitioners to avail the remedy of appeal.

Learned Government Pleader could not put forward any tangible argument to convince us that the direction given by the learned Single Judge is vitiated by an error of law, but submitted that while granting leave to the respondents to file appeal, the learned Single Judge should have fixed a time limit for filing and disposal of the appeal.

In regard to the aforementioned submission of the learned Government Pleader, it is sufficient to observe that the appellants

should have, instead of filing appeal under Clause 15 of the Letters Patent, filed an application for review and/or clarification so as to enable to the learned Single Judge to consider their request for fixing a time limit for filing of appeal and disposal thereof.

With the above observations, the appeal is dismissed leaving the appellants to file appropriate application before the learned Single Judge.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 22.06.2006
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